



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/158836

PRELIMINARY RECITALS

Pursuant to a petition filed July 05, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on August 05, 2014, at West Bend, Wisconsin.

The issue for determination is whether the agency correctly determined that the Petitioner owes premiums for March 2014, May 2014 and June 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Williamson, Lead Economic Support Specialist
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. The Petitioner and his family received BadgerCare+ benefits, but because the household income went over 100% FPL and because of new income limits affecting BadgerCare+ eligibility, the

- Petitioner and his wife went into a BadgerCare+ Extension effective March 1, 2014. (Exhibit 2, pg. 2)
3. On April 1, 2014, the agency sent the Petitioner a notice that indicated that his application for Medicaid/Badgercare Pluse had been approved for the period between March 1, 2014 and April 30, 2013. (Exhibit 2, pg. 7)
 4. The April 1, 2014 notice further indicated that Petitioner and his wife were eligible for the Badger Care Extension as of March 2014 and that a premium of \$239.00 per month is due as of April 2014. (Exhibit 2, pg. 8)
 5. On April 4, 2014, the agency sent the Petitioner a notice indicating that his application for BadgerCare Plus had been approved for the period of March 1, 2014 through February 28, 2014. (Exhibit 2, pg. 9)
 6. The April 4, 2014 notice indicated that, “The amount of your BadgerCare Plus premium is \$239 as of April 2014.” (Exhibit 2, pg. 9)
 7. The April 4, 2014 notice further indicated a BadgerCare extension was open for Petitioner and his wife for March 2014 through February 2015. It stated, “A premium payment of \$239 per month is required as of April 2014 to maintain BadgerCare eligibility. Non-payment of premium will end BagerCare benefits for [Petitioner and his wife]. Premium may change if household income or household composition changes.” (Exhibit 2, pg. 10)
 8. On April 7, 2014, the agency sent the Petitioner a premium payment coupon that indicated that a premium was due for March 2014, with a backdated due date of March 10, 2014. (Exhibit 2, pg 11)
 9. The Petitioner paid the March premium on April 18, 2014; the April premium was paid on May 20, 2014; the premiums for May, June and July were paid on July 11, 2014. (Exhibit 2, pgs. 13-17)
 10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 5, 2014. (Exhibit 1)

DISCUSSION

The Petitioner argues that he was not given proper notice and as such, should not have to pay premiums for March 2014, May 2014, and June 2014.

In the case at hand, Petitioner’s premium increased from zero/nothing to \$239 per month.

The BadgerCare+ Eligibility Handbook (BEH) addresses this situation:

19.10.2 Increased premium amount

You must give a 10-day notice to the member when the group is required to pay a premium for the first time or is required to pay a higher premium. The increase is effective the following month if BC+ eligibility is confirmed before adverse action. If the change is confirmed after adverse action, the increase is not effective until the month after the following month. *Emphasis added.*

Example 1: Jessica has BC+ with a premium for her and her family. She reports a change in income to her worker on April 23rd that results in a higher premium amount. Jessica’s premium amount will increase effective June 1st. She will receive the coupon for the new premium amount at the end of May.

Adverse Action is defined as, “The last day of the month a change can be made in CARES to affect eligibility for the following month. Adverse Action is usually 13 days prior to the last day of the month to allow for a timely notice to be generated.” *Id.*

The Premium for March 2014

None of the notices of action that were sent to the Petitioner specifically stated that he needed to pay a premium for March benefits. Petitioner was not made aware that the agency was seeking a premium for March benefits until he received a payment coupon on April 7, 2014, and the payment coupon did not advise the Petitioner of his appeal rights. As such, it is found that Petitioner’s appeal of the March premium is timely.

With regard to the March 2014 premium, the agency did not give the Petitioner the ten-days notice required by *BEH §19.10.2* above. As such, the agency should not have retro-actively required the Petitioner to pay a premium for March 2014.

Effective January 1, 2014, premium payments can no longer be made in advance. *BEH §19.7* As such, the premiums erroneously paid for March and April 2014, cannot be applied prospectively. So, the agency will have to take corrective action and refund the premium to the Petitioner, pursuant to *BEH §28.9.1*.

Premiums for April 2014 forward

The agency sent the Petitioner a notice of decision dated April 4, 2014, advising him that, “A premium of \$239 per month is required as of April 2014 to maintain BadgerCare eligibility.” (*Emphasis added*; Exhibit 2, pg. 10) The April 4, 2014 notice also advised the Petitioner that he had 45 days in which to file an appeal, if he disagreed with this determination.

The Petitioner needed to file his appeal by May 19, 2014. The Petitioner did not file an appeal until July 5, 2014. As such, his appeal is untimely and no jurisdiction exists to consider the merits of his appeal.

It should be noted however, that the agency can, of its own accord, take corrective action under *BEH §28.9.1*, if it feels additional corrective action needs to be taken.

CONCLUSIONS OF LAW

1. The agency incorrectly required the Petitioner to pay premiums for March 2014.
2. Petitioner’s appeal concerning premiums charged for April 2014 forward is untimely and no jurisdiction exists to address the merits of that appeal.

THEREFORE, it is

ORDERED

That the agency refund to the Petitioner the \$239 premium she paid for March 2014. The agency shall take all administrative steps necessary to complete this task within 10-days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of September, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 16, 2014.

Washington County Department of Social Services
Division of Health Care Access and Accountability